

To: Hal Candee [hcandee@altshulerberzon.com]
Cc: []
Bcc: []
From: CN=Tom Hagler/OU=R9/O=USEPA/C=US
Sent: Tue 9/25/2012 9:31:33 PM
Subject: NMFS comment to SWRCB
SWCRB Workshop 2 NMFS Comments 9-7-12 draft v.5.docx

Follow up to our call.

I am attaching a link to the NMFS comment to the Board for the 2nd workshop:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt091412/nmfs_comments_120914.pdf

And I am drawing your attention to the "ESA/WQCP" interface.

Here's a longish quote (note that I am copying this quote from the final draft NMFS comment, which appears to be the same as the submitted comment in this quote; the agencies have been sharing testimony for these workshops):

"Section 7 of the ESA requires that Federal agencies insure that their actions do not jeopardize the continued existence of threatened or endangered species or adversely modify their designated critical habitat. While section 7 requires that the appreciable reduction in the likelihood of recovery be considered in the jeopardy analysis, section 7 itself does not require a Federal action to ensure recovery of the species. Rather, section 7 only bars Federal agencies from taking actions that would reduce appreciably both the likelihood of survival and recovery of a species. Consequently, prescriptions in an ESA biological opinion are not necessarily what is required for full recovery of the species.

For example, in June 2009, NMFS issued the Biological and Conference Opinion (BiOp) on the Long-Term Operations of the Central Valley Project (CVP) and State Water Project (SWP), pursuant to section 7 of the ESA. Requirements in the reasonable and prudent alternative (RPA) should not be construed as necessary to recover the anadromous fish species or the habitats that they depend on. The flow protections described in the project description and RPA are the minimum flows necessary to avoid jeopardy. The jeopardy legal standard is that which would "appreciably reduce the likelihood of survival or recovery." The Delta flow criteria necessary to "protect public trust resources" may not be the same as those called for in the NMFS BiOp, and will likely be greater than those described in the NMFS BiOp. In addition, NMFS' main focus in developing the RPA was, as section 7 requires it must be, on the proposed Federal action and alternative actions that can be taken by the U.S. Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR) in Central Valley Project and State Water Project controlled streams on the Sacramento and San Joaquin Rivers and their tributaries, rather than actions that could also be taken by the many other non-federal actions in those watersheds. Operations on some San Joaquin and Sacramento River tributaries were not within the scope of the consultation. For example, flows on the Merced and Tuolumne rivers, tributary to the San Joaquin River, influence flows at Vernalis, but are not part of the Federal action. In addition, the only independent populations of spring-run Chinook salmon, which are important to the viability of the species, are in Butte, Mill, and Deer creeks, all of which are not within the scope of the consultation."

Tom Hagler

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----- Forwarded by Tom Hagler/R9/USEPA/US on 09/25/2012 02:22 PM -----

From: Erin Foresman/R9/USEPA/US
To: Karen Schwinn/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA, Bruce Herbold/R9/USEPA/US@EPA, Tim Vendlinski/R9/USEPA/US@EPA, Valentina Cabrera-Stagno/R9/USEPA/US@EPA
Date: 09/14/2012 08:21 AM
Subject: skimmed the NMFS DRAFT comments

hi gang,
i skimmed through the nmfs comments, a tidy 63 kb document, few orders of magnitude smaller than ours (6.1 MB). i didn't catch anything in this letter that is contrary to what we are saying in ours.

it is heavy on status of their species, sources of new info, sources of anticipated info. it refers to prior submissions for direction to the board on what they should 'do.'

next week we should work with nmfs, fws, and dfg to provide as clear and concise direction to the board in our presentation.

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I work a part time schedule (M 7:30a - 4:00p, T - F 7:30 - 2:00p)

----- Forwarded by Erin Foresman/R9/USEPA/US on 09/14/2012 08:21 AM -----

From: Ryan Wulff <ryan.wulff@noaa.gov>
To: Alice Low <ALOW@dfg.ca.gov>, Pat Brandes <Pat_Brandes@fws.gov>, Roger_Guinee@fws.gov, Bruce Herbold/R9/USEPA/US@EPA, Erin Foresman/R9/USEPA/US@EPA,
Cc: garwin.yip@noaa.gov
Date: 09/12/2012 12:44 PM
Subject: Re: Revised draft comments for Workshop 2 (salmonids)

All,

Attached are the current draft NMFS comments going through final clearance. These still may change a little and the references/footnotes need to be cleaned up. I wanted to give you all a heads up that this is where our current draft sits (especially since it refers to some of your comments in it).

-Ryan